

CERTIFICATE OF MAILING

I hereby certify that this paper or, if this paper is a transmittal letter, every other paper or fee referred to therein, is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner of Patents & Trademarks, Washington, DC 20231, on

January 24, 2001 (Date of Deposit)

1/24/01

Name



Docket No.: 2650/1F918-US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kendall A. SMITH

Serial No.: 09/708,635

Filed: September 22, 2000

Examiner: Unassigned

For: LOW DOSE IL-2 FOR POTENTIATION OF IMMUNITY

-----  
Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231

BOX DAC

Sir:

PETITION UNDER 37 C.F.R. 1.181(a)

Applicants request that the above-captioned application be granted the filing date of September 22, 2000, the date the application was originally and properly filed.

1. Applicants properly filed the application entitled LOW DOSE IL-2 FOR POTENTIATION OF IMMUNITY on September 22, 2000 in the United States Patent and Trademark Office (PTO), which filing included the following documents:

Postage-paid return receipt postcard  
Transmittal Letter  
Unexecuted Declaration  
Specification  
Formal Drawings

The Express Mail number EL628222879US is indicated on the postcard and on the first page of the specification in the Express Mail Certificate. Copies of the documents listed above are enclosed as Exhibit 1.

2. The application and accompanying documents were mailed to the PTO via Express Mail on September 22, 2000. A copy of the Express Mail number EL628222879US receipt date stamped by the USPS September 22, 2000 is enclosed as Exhibit 2.

3. The office of the undersigned attorney received the return receipt postcard date-stamped September 22, 2000 by the PTO as evidence that the application and all documents included with the application were filed in the PTO on September 22, 2000. The application however was not given a Serial Number. A copy of the September 22, 2000 date-stamped postcard is attached as Exhibit 3.

4. On November 3, 2000, Examiner Steven Tu of Group 1653 telephoned the undersigned attorney and informed her that he found an application (specification only) entitled "Low Dose IL-2 for Potentiation of Immunity", Docket No. 2650/1F918-US1, in the file of Application Serial No. 08/751,427 (Docket No. 2499/1C840-US2) which application he is in charge of examining. In Application No. 08/751,427, the undersigned had filed a continued prosecution application (CPA) on September 22, 2000 in Express Mail envelope number EL628222879US, the same Express Mail envelope in which the above-captioned application was mailed. A copy of the return receipt postcard with Express Mail number EL628222879US date-stamped September 22, 2000 for the filing of the CPA of 08/751,427 (Docket No. 2499/1C840-US2) is enclosed as Exhibit 4.

5. On November 9, 2000, Applicant had hand-delivered to the PTO the following documents:

A) A copy of the application entitled LOW DOSE IL-2 FOR POTENTIATION OF IMMUNITY and accompanying documents as originally filed on September 22, 2000 (Specification, Unexecuted Declaration, and Formal Drawings, Exhibit 1), and a Transmittal sheet.

B) A copy of the postage-paid return receipt postcard date-stamped September 22, 2000 by the PTO (Exhibit 3).

C) A Communication requesting that the application be granted a Serial Number and the filing date of September 22, 2000. Copies of the Communication and Transmittal sheet listed in A above are attached as Exhibit 5.

D) A postage-paid return receipt postcard listing the documents in A-C above. A copy of the postcard is attached as Exhibit 6.

6. The office of the undersigned attorney received the return receipt postcard date-stamped November 9, 2000 as evidence of receipt of the hand-delivered documents listed in paragraph 5 above in the PTO on that date. A copy of the postage-paid return receipt postcard date-stamped November 9, 2000 by the PTO is attached as Exhibit 7.

7. On January 19, 2001, the undersigned's office received a Filing Receipt for the application entitled LOW DOSE IL-2 FOR POTENTIATION OF IMMUNITY which indicated that the above-captioned application was assigned Serial No. 09/708,635 and an incorrect filing date of November 9, 2000. The undersigned attorney became aware of the error in the filing date assigned to the above-captioned application upon receipt of the Filing Receipt. A copy of the Filing Receipt is attached as Exhibit 8.

8. Based on the above, Applicant believes that through no error on the part of Applicant or Applicant's attorney, the application papers of the above-captioned application were separated and a serial number and filing date were not granted on September 22, 2000 to the application properly filed on September 22, 2000.

9. Applicant believes that through no error on the part of Applicant or Applicant's attorney, the application was erroneously granted a filing date of November 9, 2000, the date Applicant filed a request to be granted the correct filing date of September 22, 2000.

Applicant respectfully requests that the above-captioned application, assigned Serial No. 09/708,635, be granted a filing date of September 22, 2000.

Respectfully submitted,



Raina Semionow  
Reg. No. 39,022  
Attorney for Applicant(s)

DARBY & DARBY P.C.  
805 Third Avenue  
New York, NY 10022  
212-527-7700